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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 430

COLONIAL OIL COMPANY,

Petitioner,

vs.

AMERICAN OIL COMPANY.

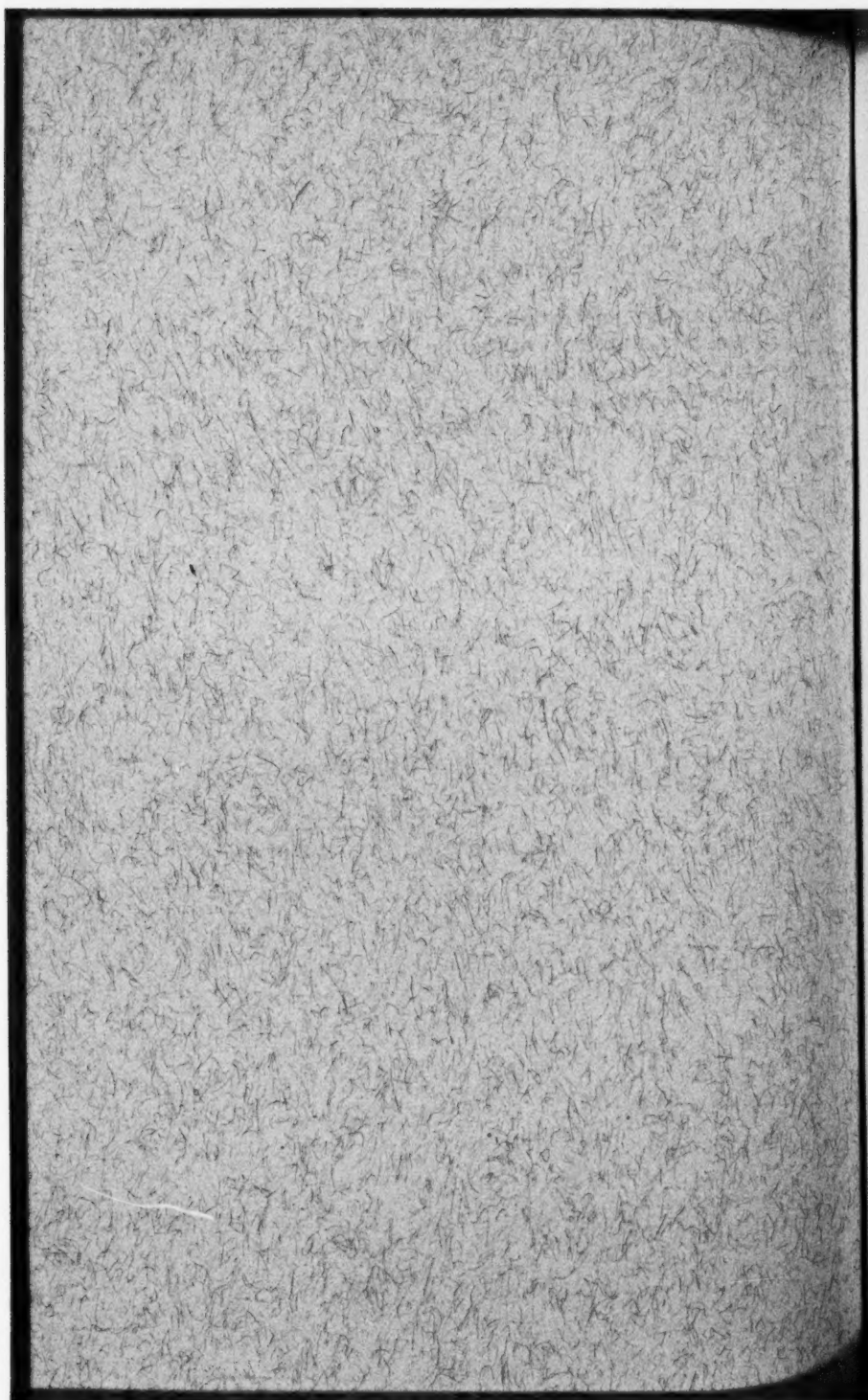
**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FOURTH CIRCUIT AND SUPPORTING
BRIEF.**

CLAUDE N. SAPP,

HUGH O. HANNA,

THOS. M. BOULWARE,

Counsel for Petitioner.



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THE HISTORY OF THE UNITED STATES

OF AMERICA

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PETITION FOR WRIT OF CERTIORARI.

*To the Honorable the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your Petitioner, Colonial Oil Company, respectfully represents that it is aggrieved by the final judgment and decision of the United States Circuit Court of Appeals for the Fourth Circuit, in an action at law entitled, No. 4957, American Oil Company, Appellant, *v.* Colonial Oil Company, Appellee, decided August 12, 1942, and by reason thereof your Petitioner prays for the allowance of a writ of certiorari to be directed to the United States Circuit Court of Appeals for the Fourth Circuit, in order that the said judgment and decision may be reviewed by your Honorable Court.

I.

Summary Statement of Matter Involved.

This is an action at law, commenced in the District Court, in which petitioner, as plaintiff, sought actual and punitive damages upon two grounds, (1) trespass to realty, and (2) conversion of personalty. The two grounds are not separately stated but are jumbled together in one complaint. No motion was made by the defendant to require a separate statement of the two causes of action, or to eliminate either issue from the case.

The defendant moved at the close of the testimony for a direction of the verdict on the whole case, and then for a direction of the verdict in its favor as to all punitive damages; but did not make any motion or ask for any peremptory instructions wherein the case for trespass was distinguished from the case for conversion. The District Judge reserved his decision on these two motions, took the matters under advisement, and submitted the case to the jury. It returned a general verdict for \$666.00 actual and \$5,000.00 punitive damages.

The trial was had at the Fall 1941 Term, Orangeburg Division, and thereafter defendant also moved to set aside the verdict and to direct the verdict in its favor in accordance with its motion, and such matter came on to be heard by the Trial Judge on December 17, 1941. No motion for a new trial was made by either party. Counsel for both sides were permitted to file written arguments and after consideration of the same an opinion was filed on March 3, 1942 (43 Fed. Sup. 718), wherein the Judge concluded that such motion should be refused, and a formal order refusing the motion was made March 14th, 1942.

On March 28, 1942, the Judge made another order, reciting that Judgment had been entered on the verdict, November 24, 1941, "although defendant's motion for a

direction of the verdict had not then been finally ruled upon", and ordered that the effective date of the entry of such judgment should be taken to be the date of filing of the order over-ruling defendant's motion, which was March 14, 1942.

Upon appeal by the defendant, American Oil Company, to the Circuit Court of Appeals for the Fourth Circuit, that Court, for the reasons stated in its opinion, entered August 12, 1942, on the same date, reversed the judgment appealed from, and remanded the case for a new trial unless the punitive damages be remitted.

In the said opinion, it is definitely held that the petitioner is entitled to actual damages both as to conversion and trespass, and further the Court did not find error in the District Judge's holding that petitioner is entitled to punitive damages as to the conversion; but the Court of Appeals, *upon* weighing the evidence *pro* and *con* and holding that the respondent was not guilty of wilfulness entitling petitioner to punitive damages in the case for trespass, proceeds to *merge* petitioner's undisputed right to punitive damages for conversion into its other distinct right of action for punitive damages for the trespass, and thereupon reverses the judgment unless the petitioner remits the amount of the punitive damages separately included in the verdict. The reasoning of the Court is given in footnote.¹

¹ "Little need be added in this connection with respect to American's wrongful use of Colonial's equipment. Obviously the gist and burden of the complaint were American's appropriation of the location. Colonial was not interested in the retention of its equipment. On the contrary, it was to its interest to sell the equipment at the Palmetto station, if it had no lease on the premises, as it had done in all of the other stations taken over at the time in conformity with the local practice known to both companies. Colonial's insistence at this time on its rights with respect to the equipment is merely a part and incident of its larger claim as to which no punitive damages are recoverable."

"Our conclusion is that the judgment should not stand since it includes an allowance for punitive damages; * * *"

There may or may not be errors or irregularities in the trial, for which, unless waived by respondent or otherwise rendered harmless, the District Judge would have granted a new trial if respondent had moved therefor; but the only ruling of the District Judge, now reversed, was his refusal to direct the verdict in favor of respondent as to all punitive damages.

There is in the record evidence of wilfulness in the trespass, not discussed by the Court of Appeals, in the form of a statement attributed by petitioner's witness Hanna to respondent's district manager Alridge, when warned over the telephone that action would be brought against respondent if it took possession of this realty, that: "You will have trouble when it comes to the testimony because you don't know that I am Mr. Alridge."

By order of August 29, 1942, the remittitur was stayed for thirty days.

II.

Basis of Jurisdiction of Supreme Court.

Jurisdiction rests upon section 240-a of the Judicial Code, as amended by Act of Congress of February 13, 1925, 43 Stat. 936, conferring jurisdiction to review any judgment of the Circuit Court of Appeals; and section 5-b of Rule 38 of the Supreme Court, together with diversity of citizenship and the jurisdictional amount.

III.

Questions Involved.

1. Does the decision herein reverse the judgment of the District Court for *error in law* on the part of the District Judge so that such reversal is authorized by the Seventh Amendment, when, conceding for the purposes of this question that there is insufficient evidence of wilfulness to war-

rant punitive damages for the trespass to realty, it is held by the District Judge, without reversal, that there is sufficient evidence of wilfulness to warrant punitive damages in the action for conversion of the personalty, and when no separate motion was made for direction of the verdict as to punitive damages for the trespass as distinguished from the conversion, and the reversal is accomplished by merging the distinct right to such damages for conversion into the wholly different right to such damages for trespass—a physical impossibility?

2. Is the decision herein in conflict with *The Hartford Life & Annuity Ins. Co.*, 144 U. S. 439, in that the District Judge is held to have committed *error in law* in not directing the verdict for respondent on the issue of wilfulness in the trespass to the realty when no motion was made for such direction, the only motion made as to punitive damages having included the issue of wilfulness in the conversion, which prevented the granting of that motion?

3. Is the decision herein in violation of Act of Congress, 18 Stat. 318, 28 U. S. C. A. 879, and in conflict with *McCaughn v. Real Estate Land Title & Trust Co.*, 297 U. S. 606, when there is evidence in this case warranting the finding of the District Judge of evidence of wilfulness in the respondent's trespass to the realty, consisting of conflicting testimony and variable reasonable deductions, dependent upon the veracity of the witnesses?

IV.

Reasons Relied Upon for Allowance of the Writ.

The judgment of the Court of Appeals is arrived at in a novel manner, and the petition presents questions concerning right of jury trial and the Seventh Amendment not yet passed upon by the Supreme Court. Holding that there

is no evidence of wilfulness that would warrant punitive damages as to the trespass, and not reversing the District Judge in holding that there is evidence of wilfulness in the conversion of the personalty, and in the absence of any effort of the respondent to obtain a directed verdict as to punitive damages in the trespass alone, the Court of Appeals simply holds that while petitioner refused to sell its personalty to respondent, it would have been to its interest to do so, and therefore, a *non-sequitur*, its insistence upon its rights as to its personalty is merely a part and incident of its claim as to the realty—a holding both novel and incomprehensible, yet effectual in causing a re-examination of a matter once tried by a jury, contrary to the Seventh Amendment.

Unless reversed, the decision will stand as a precedent in the Fourth Circuit, and lead to results in other cases not contemplated by the Seventh Amendment, much confusion and in the end to the necessity of an adjudication by the Supreme Court.

Respectfully submitted,

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